No. 303.
Reply Brf. of Fuller, Leo Alexandroff for Pet'r

Office Supreme Court U.S.
FILED
NOV 30 1901
JAMES H. MCKENNEY

SUPREME COURT OF THE UNITED STATES.

(Oct. Term, 1901. No. 303.)

Filed Nov. 30, 1901.

Wm. R. Tucker, Vice-Consul, etc.,

vs.

The United States *ex Rel* Leo Alexandroff.

Petitioner's Reply to Respondent's "Supplemental Memorandum."

(1.) We have no quarrel with the doctrine laid down in the various cases cited in this supplemental memorandum.

The case of *ex parte* Van Hoben, 4th Dillon, 411, simply asserts the familiar doctrine that the complaint in an extradition cause must recite one of the offenses named in the Treaty; the complaint recited forgery but not the species of forgery nor the character of the document forged in such a way as to bring the charge within the terms of the Treaty. There is no such blemish in the present case.

(2) United States *v.* Wyngall, 5th Hill (N. Y.), as cited goes no farther than to suggest that an issue may be raised upon *habeas corpus* without a separate traverse; granting this, the question still remains as to what the issue was. Our contention that the issue was simply as to what evidence was produced before the Commissioner is untouched and we claim that no evidence bearing on that issue was before the Courts below.

(3) That the Court may hear evidence to determine the jurisdiction of the Commissioner we have never disputed, but claim that this is precisely what was not done in the present case.

(4) We take this opportunity of recalling to the Court the three cases of public notoriety in which armed forces of other nations were allowed to land on United States soil.

(*a*) At the Columbian Celebration in 1893 Marines from every foreign war vessel, except the Spanish, were allowed to land and did land and parade in the public streets of New York under the control of their various commanders.

(*b*) On the occasion of the Dewey Parade, a regiment of Canadian Troops was given permission to come into the United States and join in the Dewey Parade.

This permission was granted as in the present case by the *Secretary of the Treasury.*

(*c*) At the Buffalo Exposition, but recently closed, Mexican Troops were allowed to go through the United States and be present at Buffalo and remain there during the Exposition.

None of these permissions required the assent of Congress.

There is no law which makes the assent of Congress necessary in such cases, nor is there any law making the assent of Congress necessary in the extreme case suggested by Mr. Justice Harlan in the course of the argument, to wit, the admission of a troop of British soldiers and leave for them to cross our country in case of a war with Russia where such a transit might facilitate their operations against a Russian enemy. Such an act on the part of the President in case of war might well be considered a breach of the neutrality to which friendly nations are bound, and might well be considered a *casus belli*, and this would be equally so whether the permission was given by the Executive or by Congress. There are not wanting instances in which the action of

the Executive, quite as much as the action of Congress, can be and has been so considered. But, this circumstance does not affect the question whether the power to admit a foreign force lies primarily with the Executive.

New York, 29th November, 1901.

Respectfully submitted,

PAUL FULLER,
JOHN F. LEWIS,
FREDERIC R. COUDERT, Jr.,
Counsel for Petitioner.

No. 642

Notice &c.

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JAMES H. McKENNEY,
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SUPREME COURT OF THE UNITED STATES. 1

Filed April 22, 1901.

ROBERT C. MOTHERWELL, JR., Keeper of the Philadelphia County Prison, and CAPTAIN VLADIMIR BEHR, Master of the Russian Cruiser "VARIAG,"

Appellants,

AGAINST 2

THE UNITED STATES OF AMERICA, *ex rel.* LEO ALEXANDROFF,

Appellee.

Please take notice that on Monday, April 22nd, 1901, at the opening of the Court on that day, or as soon thereafter as counsel can be heard, the motion of 3
which the annexed is a copy, will be submitted to the Supreme Court of the United States for the decision of the said Court thereon.

Dated, April 16th, 1901.

PAUL FULLER,
JOHN F. LEWIS,
Counsel for Petitioner.

To

Messrs. HARRIS & HASSLER,
Attorneys for Leo Alexandroff; 4
SAMUEL DIXON, Esq.,
Attorney for Cramps' Shipbuilding Company.

SUPREME COURT OF THE UNITED STATES. 1

ROBERT C. MOTHERWELL, JR., Keeper of the Philadelphia County Prison, and CAPTAIN VLADIMIR BEHR, Master of the Russian Cruiser "VARIAG,"

Appellants,

AGAINST 2

THE UNITED STATES OF AMERICA, *ex rel.* LEO ALEXANDROFF,

Appellee.

And now comes Captain Vladimir Behr and William R. Tucker, Vice-Consul of Russia at Philadelphia, by Paul Fuller and John F. Lewis, Esquires, their counsel, and move this Honorable Court for a writ of *certiorari* directed to the Honorable the Judges of the United States Circuit Court of Appeals within and for the Third Judicial District, commanding them forthwith to certify and return to this court all of the proceedings by them had in the suit lately before them wherein Robert C. Motherwell, Jr., Keeper of the Philadelphia County Prison and Captain Vladimir Behr, Master of the Russian Cruiser were appellants, and the United States of America, *ex rel.* Leo Alexandroff, was appelle, etc. 3 4

Dated, April 16th, 1901.

PAUL FULLER,
JOHN F. LEWIS,
Counsel for Petitioner.